IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

WRIT PETITION NO. 19458 of 2021

RADHESHARAN SHAH
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

……

Appearance:

Shri Sanjay K Agrawal – Sr. Advocate with Ms. Guncha Rasool – Advocate and Shri Jaideep Kaurav – Advocate for the petitioner.

Shri Agnivesh Dubey – Advocate for respondent No.3.

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O R D E R

(Reserved on 26.06.2025)
(Pronounced on 02.07.2025)

The present petition has been filed challenging the order (Annexure P-1) whereby petitioner who is working on the post of Gram Panchayat Secretary has been terminated from service.

2. Learned counsel for the petitioner has submitted that the services of the petitioner are governed with statutory rules known as M.P. Panchayat Service (Gram Panchayat Secretary Recruitment and Conditions of Service) Rules, 2011 (for short 'Rules of 2011'). It is argued that the petitioner was working on the post of Panchayat Secretary and on allegations of misconduct which were factual in nature, the services of the petitioner have been terminated by order Annexure P-1. It is argued that the

allegations against the petitioner being in the realm of facts and denied by the petitioner, therefore it was not open for the respondents to have proceeded to inflict major penalty of dismissal from service.

3. It is argued that as per the Rules of 2011 as amended by notification dated 09.08.2017 the procedure for discipline and control has been laid down and though as per Rule 7 there is no specific provision for conducting regular departmental enquiry as Rule 7(2) lays down provision of giving 7 days show cause notice and obtaining reply, but once the charges are factual in nature then conducting regular departmental enquiry is mandatory as it would satisfy the fundamental objectives of principles of natural justice.

4. The learned counsel for the petitioner further submits that the allegation was that one Smt. Brahaspatiya wife of Lalman Shah had expired in the village where petitioner was posted as Secretary of Panchayat and application was made to get funeral assistance for the death of said lady. The said lady had expired on 05.11.2019 but application was submitted stating her death to be on 04.08.2020 which would entitle a funeral assistance of Rs.2.00 lakhs. However, the said application had been filed annexing a forged death certificate mentioning date of death to be 04.08.2020 whereas the said lady had not expired on that date but had expired much earlier and as per that date her death would not have entitled the family to receive funeral assistance of Rs.2.00 lakhs.

5. It is contended that show cause notice Annexures P-8 and P-10 were issued to the petitioner which were replied vide Annexures P-9 and P-11. It is contended that the petitioner denied the allegations despite which no further enquiry was conducted and therefore, though the rules do not

specifically mandate regular enquiry but imply so as per Rule 7 (5) (a) and even otherwise, if an stigmatic order has been passed even after denial of charges by the delinquent, then enquiry ought to have been carried out.

6. It was argued that the allegation that petitioner had forwarded the application form for funeral assistance was denied by the petitioner despite which without conducting any enquiry the petitioner has been punished with penalty of dismissal.

7. Per contra, learned counsel for the respondents has vehemently opposed the petition by contending that the misconduct of the petitioner was duly established from the material available on record. The petitioner was given a show cause notice and his reply was taken wherein he admitted to the allegations, therefore, that is sufficient for compliance of principles of natural justice and therefore, no indulgence is required to be caused in the matter.

8. It is further argued that the punishment of dismissal is not commensurate with the misconduct because the petitioner was posted as Secretary and he forwarded the application for funeral assistance which was supported by forged documents and erroneous date of death. The exchequer was put to loss by an ineligible person getting benefit of assistance of Rs.2.00 Lakhs. It is immaterial that if the said beneficiary later refunded the amount which will not wipe out the misconduct.

9. Heard.

10. The State Government has framed Rules of 2011 governing the service conditions of Panchayat Secretary which were amended vide notification dated 09.08.2017. As per said notification Rule 7 has been

substituted containing following procedure for discipline and control. The said rule reads as under:-

> *"7. **Discipline and Control**.-Disciplinary action against Gram Panchayat Secretary shall be taken under the following circumstances:-*
>
> *(1) The Gram Panchayat Secretary shall be deemed to have been automatically terminated from services if he has been convicted by the court for any offence of moral turpitude.*
>
> *(2) The Gram Panchayat Secretary, after giving seven days Show Cause notice and after giving him opportunity of being heard, shall be punished under the following conditions:-*
>
> *(a) doing financial irregularity, embezzlement or causing financial loss to the Panchayat Raj institution or government;*
>
> *(b) he has been punished or any order has been passed against him for recovery of any amount under the provisions of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (No. 1 of 1994);*
>
> *(c) In case he is continuous unauthorized absent from duty;*
>
> *(d) in case he misbehaves;*
>
> *(e) in case the resolution has been passed by the Gram Sabha to the effect that the Secretary negligently performs his duties or he does not discharge the duties properly;*
>
> *(f) in case he behaves seriously undisciplined manner.*
>
> *(3) Any proper punishment out of the following punishments, may be imposed by passing the speaking order in writing:-*
>
> *(a) termination of Service; or*
>
> *(b) withholding of increment; or*
>
> *(c) recovering the amount of loss caused to Panchayat/State Government; or*
>
> *(d) the period of unauthorized absence to be declared dies-non or without pay.*
>
> *(4) The Chief Executive Officer of Zila Panchayat shall be the competent authority for taking disciplinary action. The appeal may be filed before the Commissioner, Panchayat Raj Sanchalnalay within 15 days from the date of order of imposing punishment.*

> *(5) For the purpose of taking disciplinary action, the following conditions shall be following by the Competent Authority,—*
>
> *(a) Principles of Natural Justice for hearing shall be applicable;*
>
> *(b) The certified proof shall be shown to the concerned Secretary of Gram Panchayat;*
>
> *(c) All proceedings shall have to be completed within two months from the date of issuing the notice under sub-rule (2) above.*

11. As per said notification Rule 7(2) provides for issuing of show cause notice and after giving opportunity of being heard issuing order of punishment. No provision of issuing charge sheet and regular departmental enquiry is laid down. However, as per Rule 5(a) it is provided that the competent authority shall observe the principles of natural justice for hearing. Therefore, this Court would proceed to examine whether the facts of the case contain such a denial which would require the authority to conduct regular departmental enquiry.

12. The allegation in the case was that a lady who was resident of the village had died around 2013-2014 and fraudulent death certificate was issued on 04.08.2020 showing death of 04.08.2020. Upon issuing show cause to the petitioner the fact came on record that infact there was no death certificate dated 04.08.2020 and the certificate of 04.08.2020 which was submitted along with application for funeral assistance was forged certificate and actual date of death of that lady was 05.11.2019.

13. It is not in dispute between the parties that the family would not have been entitled to get funeral assistance of Rs.2.00 lakhs if the date of death had been 05.11.2019 because apparently from the documents available on record it appears that funeral assistance was given under some scheme which would become applicable only if the date of death would be 04.08.2020. Learned counsel for the respondents expressed possibility that

assistance might be under some assistance scheme under Covid-19 pandemic. Be that as it may be, it is not disputed that the family was not entitled to get financial assistance for funeral as per actual date of death i.e. 05.11.2019.

14. The defence of the petitioner in his reply Annexure P-9 was that the lady died on 05.11.2019 and certificate as per actual date of death was already issued by the Gram Panchayat which was also uploaded on the portal. However, some application was filed with the Janpad Panchayat seeking funeral assistance projecting date of death to be 04.08.2020 and the petitioner had no say in the matter being Panchayat Secretary because he never issued death certificate showing date of death to be 04.08.2020.

15. However, upon perusal of reply Annexure P-9 it is evident that the petitioner has admitted that said application of the beneficiary was recommended by the petitioner and the application contains signature of the petitioner as recommendatory authority being Secretary of Gram Panchayat.

16. In the subsequent reply (Annexure P-11) the petitioner made even clearer averments by stating that he was asked to sign the application as recommended by some employee of Janpad Panchayat and under mental tension he recommended the case on the application without scrutiny. He further submitted that the payment has been erroneously made to the beneficiary who was not entitled to the payment and he pursued with the beneficiary to deposit the amount. Para 3 of the reply (Annexure P-11) contains following averments:-

> ''3. मृतक का लड़का रमेश शाह जनपद पंचायत के संबंधित शाखा प्रभारी के मिलीभगत से अन्त्येष्टी राशि का भुगतान हेतु आवेदन पत्र

> सरपंच व अन्य लोगों के हस्ताक्षर सहित तैयार कर जनपद कार्यालय में मेरे पास भुगतान अनुशंसा हेतु दिया गया और कहा गया कि आप अपना हस्ताक्षर बना दें। उक्त आवेदन के साथ संलग्न मुत्यु प्रमाण पत्र में मुतक का लड़का रमेश शाह जनपद पंचायत के मिलिभगत से स्कैन कराकर मुत्यु दिनांक 05.11.2019 के स्थान पर 04.08.2020 करा दिया गया था। तत्कालीन दैविक आपदा के कारण मानसिक तनाव की स्थिति में मेरे द्वारा पोर्टल से बिना चेक किये ही भुगतान हेतु अनुशंसाा कर दिया गया, यह मेरे सबसे बड़ी गलती है।''

17. Evidently as per aforesaid para-3 the petitioner admitted to all the allegations against him. He admitted that an application containing wrong date of death supported by forged death certificate was recommended by him under his signature and he submitted that he did it under mental tension. Once the petitioner admitted to have recommended a fraudulent application supported by forged documents and even payment was released on that application then nothing remains to be enquired into the matter further. The date of death of persons within Gram Panchayat had to be scrutinized by the petitioner and therefore, without recommendation of the petitioner the payment could not have been made to the beneficiary by the Janpad Panchayat. The petitioner admitted to having signed his recommendation on the application which in itself was nothing but fraud and supported with forged document. Even in order Annexure P-1 para-4 (IV) it has been held that the petitioner has admitted to the allegation and this was one of the reasons behind the punishment order being passed. In para-4(IV) the findings are contained as under:-

> ''आपके द्वारा दिनांक 19.11.2020 को प्रस्तुत जवाब में स्वीकार किया गया है कि आवेदन के साथ संलग्न मुत्यु प्रमाण पत्र को मेरे द्वारा जन्म मृत्यु प्रमाण पत्र को मेरे द्वारा जन्म मृत्यु पोर्टल पर बिना जांच किए

भुगतान हेतु अनुशंसा कर दिया गया, यह मेरे सबसे बड़ी गलती है।''

18. Once the petitioner admitted to having recommended such application which was nothing but fraud and forgery and amount of Rs.2.00 Lakhs was withdrawn from State exchequer on the basis of such fraud, then in the considered opinion of this Court nothing required to be enquired into the matter and no further facts remained to be established by way of any enquiry. It is settled in law that opportunity of hearing is not an unruly horse and this Court would not mechanically set aside every order on the question of denial of opportunity of hearing. In **Natwar Singh Vs. Director of Enforcement, reported in 2010 (13) SCC 255**, it has been held as under :-

> ***26 [Ed.: Para 26 corrected vide Official Corrigendum No. F.3/Ed.B.J./3/2011 dated 10-1-2011.] .*** *Even in the application of the doctrine of fair play there must be real flexibility. There must also have been caused some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with and so forth. Can the courts supplement the statutory procedures with requirements over and above those specified? In order to ensure a fair hearing, courts can insist and require additional steps as long as such steps would not frustrate the apparent purpose of the legislation.*
>
> ***27.*** *In Lloyd v. McMahon [1987 AC 625 : (1987) 2 WLR 821 : (1987) 1 All ER 1118 (HL)] , Lord Bridge observed: (AC pp. 702 H-703 B)*
>
> > *"My Lords, the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the*

character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates. In particular, it is well established that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness."

28. *As Lord Reid said in Wiseman v. Borneman [1971 AC 297 : (1969) 3 WLR 706 : (1969) 3 All ER 275 (HL)] : (AC p. 308 C)*

"... For a long time the courts have, without objection from Parliament, supplemented procedure laid down in legislation where they have found that to be necessary for this purpose."

29. *It is thus clear that the extent of applicability of the principles of natural justice depends upon the nature of inquiry, the consequences that may visit a person after such inquiry from out of the decision pursuant to such inquiry.*

19. In **Mohd. Sartaj Vs. State of U.P., reported in 2006 (2) SCC 315**, it was held as under :-

14. *However, in S.L. Kapoor v. Jagmohan [(1980) 4 SCC 379] this Court has also observed as under: (SCC p. 395, para 24)*

"In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs."

18. *In Aligarh Muslim University v. Mansoor Ali Khan [(2000) 7 SCC 529 : 2000 SCC (L&S) 965 : AIR 2000 SC 2783] this Court considered the question whether on the facts of the case the employee can invoke*

the principle of natural justice and whether it is a case where, even if notice has been given, result would not have been different and whether it could be said that no prejudice was caused to him, if on the admitted or proved facts grant of an opportunity would not have made any difference. The Court referred to the decisions rendered in M.C. Mehta v. Union of India [(1999) 6 SCC 237] , the exceptions laid down in S.L. Kapoor case [(1980) 4 SCC 379] and K.L. Tripathi v. State Bank of India [(1984) 1 SCC 43 : 1984 SCC (L&S) 62 : AIR 1984 SC 273] where it has been laid down that not mere violation of natural justice but de facto prejudice (other than non-issue of notice) has to be proved. The Court has also placed reliance in the matter of State Bank of Patiala v. S.K. Sharma [(1996) 3 SCC 364 : 1996 SCC (L&S) 717] and Rajendra Singh v. State of M.P. [(1996) 5 SCC 460] where the principle has been laid down that there must have been some real prejudice to the complainant. There is no such thing as merely technical infringement of natural justice. The Court has approved this principle and examined the case of the employee in that light. In Viveka Nand Sethi v. Chairman, J&K Bank Ltd. [(2005) 5 SCC 337 : 2005 SCC (L&S) 689] this Court has held that the principles of natural justice are required to be complied with having regard to the fact situation obtaining therein. It cannot be put in a straitjacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case. The principle of natural justice, it is trite, is no unruly horse. When facts are admitted, an enquiry would be an empty formality. Even the principle of estoppel will apply. In another recent judgment in State of U.P. v. Neeraj Awasthi [(2006) 1 SCC 667 : JT (2006) 1 SC 19] while considering the argument that the principle of natural justice had been ignored before terminating the service of the employees and, therefore, the order terminating the service of the employees was bad in law, this Court has considered the principles of natural justice and the extent and the circumstances in which they are attracted. This Court has found in Neeraj Awasthi case [(2006) 1 SCC 667 : JT (2006) 1 SC 19] that if the services of the workmen are governed by the U.P. Industrial Disputes Act, they are protected under that law. Rules 42 and 43 of the U.P. Industrial Disputes Rules lay down that before effecting any retrenchment the employees concerned would be entitled to notice of one month or in lieu thereof pay for one month and 15 days' wages for each completed year of service by way of compensation. If retrenchment is to be effected under the Industrial Disputes Act, the question of complying with the principles of natural justice would not arise. The principles of natural justice would be

attracted only when the services of some persons are terminated by way of a punitive measure or thereby a stigma is attached. Applying this principle, it could very well be seen that discontinuation of the service of the appellants in the present case was not as a punitive measure but they were discontinued for the reason that they were not qualified and did not possess the requisite qualifications for appointment.

20. In **SBI Vs. M.J. James, reported in 2022 (2) SCC 301**, it was held as under :-

28. *Traditional English law recognised and valued the rule against bias that no man shall be a judge in his own cause i.e. nemo debet esse judex in propria causa; and the obligation to hear the other or both sides as no person should be condemned unheard i.e. audi alteram partem. To these, new facets sometimes described as subsidiary rules have developed, including a duty to give reasons in support of the decision. Nevertheless, time and again the courts have emphasised that the rules of natural justice are flexible and their application depends on facts of each case as well as the statutory provision, if applicable, nature of right affected and the consequences. In A.K. Kraipak v. Union of India [A.K. Kraipak v. Union of India, (1969) 2 SCC 262] the Constitution Bench, dwelling on the role of the principles of natural justice under our Constitution, observed that as every organ of the State is controlled and regulated by the rule of law, there is a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a quasi-judicial or administrative power are those which facilitate if not ensure a just and fair decision. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of law under which the enquiry is held and the constitution of the body of persons or tribunal appointed for that purpose. When a complaint is made that a principle of natural justice has been contravened, the court must decide whether the observance of that rule was necessary for a just decision in the facts of the case.*

29. *Legal position on the importance to show prejudice to get relief is also required to be stated. In State Bank of Patiala v. S.K. Sharma [State Bank of Patiala v. S.K. Sharma, (1996) 3 SCC 364] a Division Bench of this Court distinguished between "adequate opportunity" and "no opportunity at all" and held that the prejudice exception operates more specifically in the latter case. This judgment*

also speaks of procedural and substantive provisions of law embodying the principles of natural justice which, when infracted, must lead to prejudice being caused to the litigant in order to afford him relief. The principle was expressed in the following words : (SCC p. 389, para 32)

> *"32. Now, coming back to the illustration given by us in the preceding paragraph, would setting aside the punishment and the entire enquiry on the ground of aforesaid violation of sub-clause (iii) be in the interests of justice or would it be its negation? In our respectful opinion, it would be the latter. Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counterproductive exercise."*

30. *Earlier decision in M.C. Mehta v. Union of India [M.C. Mehta v. Union of India, (1999) 6 SCC 237] examined the expression "admitted and undisputable facts", as also divergence of legal opinion on whether it is necessary to show "slight proof" or "real likelihood of prejudice"; or legal effect of "an open and shut case", with reference to the observations in S.L. Kapoor v. Jagmohan [S.L. Kapoor v. Jagmohan, (1980) 4 SCC 379] and elucidates in the following words : (M.C. Mehta case [M.C. Mehta v. Union of India, (1999) 6 SCC 237] , SCC pp. 245-47, paras 22-23)*

> *"22. Before we go into the final aspects of this contention, we would like to state that cases relating to breach of natural justice do also occur where all facts are not admitted or are not all beyond dispute. In the context of those cases there is a considerable case law and literature as to whether relief can be refused even if the court thinks that the case of the applicant is not one of "real substance" or that there is no substantial possibility of his success or that the result will not be different, even if natural justice is followed. See Malloch v. Aberdeen Corpn. [Malloch v. Aberdeen Corpn., (1971) 1 WLR 1578 (HL)] . (per Lord Reid and Lord Wilberforce), Glynn v. Keele University [Glynn v. Keele University, (1971) 1 WLR 487] , Cinnamond v. British Airports Authority [Cinnamond v. British Airports Authority, (1980) 1 WLR 582 (CA)] where such a view has been held. The latest addition to*

this view is R. v. Ealing Magistrates' Court, ex p Fannaran [R. v. Ealing Magistrates' court, ex p Fannaran, (1996) 8 Admn LR 351] (Admn LR at p. 358) (see de Smith, Suppl. p. 89) (1998) where Straughton, L.J. held that there must be "demonstrable beyond doubt" that the result would have been different. Lord Woolf in Lloyd v. McMahon [Lloyd v. McMahon, 1987 AC 625 : (1987) 2 WLR 821 (HL)] (WLR at p. 862) has also not disfavoured refusal of discretion in certain cases of breach of natural justice. The New Zealand Court in McCarthy v. Grant [McCarthy v. Grant, 1959 NZLR 1014] however goes halfway when it says that (as in the case of bias), it is sufficient for the applicant to show that there is "real likelihood — not certainty — of prejudice". On the other hand, Garner Administrative Law (8th Edn., 1996, pp. 271-72) says that slight proof that the result would have been different is sufficient. On the other side of the argument, we have apart from Ridge v. Baldwin [Ridge v. Baldwin, 1964 AC 40 : (1963) 2 WLR 935 (HL)] , Megarry, J. in John v. Rees [John v. Rees, 1970 Ch 345 : (1969) 2 WLR 1294] stating that there are always "open and shut cases" and no absolute rule of proof of prejudice can be laid down. Merits are not for the court but for the authority to consider. Ackner, J. has said that the "useless formality theory" is a dangerous one and, however inconvenient, natural justice must be followed. His Lordship observed that "convenience and justice are often not on speaking terms". More recently Lord Bingham has deprecated the "useless formality" theory in R. v. Chief Constable of the Thames Valley Police Forces, ex p Cotton [R. v. Chief Constable of the Thames Valley Police Forces, ex p Cotton, 1990 IRLR 344] by giving six reasons. (See also his article "Should Public Law Remedies be Discretionary?" 1991 PL, p. 64.) A detailed and emphatic criticism of the "useless formality theory" has been made much earlier in "Natural Justice, Substance or Shadow" by Prof. D.H. Clark of Canada (see 1975 PL, pp. 27-63) contending that Malloch [Malloch v. Aberdeen Corpn., (1971) 1 WLR 1578 (HL)] and Glynn [Glynn v. Keele University, (1971) 1 WLR 487] were wrongly decided. Foulkes (Administrative Law, 8th Edn., 1996, p. 323), Craig (Administrative Law, 3rd Edn., p. 596) and others say that the court cannot prejudge what is to be decided by the decision-making authority. de Smith (5th Edn., 1994, Paras 10.031 to 10.036) says courts have not yet committed themselves to any one view though discretion is always with the court. Wade (Administrative Law, 5th Edn., 1994, pp. 526-30) says that while futile writs may not

be issued, a distinction has to be made according to the nature of the decision. Thus, in relation to cases other than those relating to admitted or indisputable facts, there is a considerable divergence of opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of substance or if he can prove a "real likelihood" of success or if he is entitled to relief even if there is some remote chance of success. We may, however, point out that even in cases where the facts are not all admitted or beyond dispute, there is a considerable unanimity that the courts can, in exercise of their "discretion", refuse certiorari, prohibition, mandamus or injunction even though natural justice is not followed. We may also state that there is yet another line of cases as in State Bank of Patiala v. S.K. Sharma [State Bank of Patiala v. S.K. Sharma, (1996) 3 SCC 364] , Rajendra Singh v. State of M.P. [Rajendra Singh v. State of M.P., (1996) 5 SCC 460] that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it cannot be waived.

23. We do not propose to express any opinion on the correctness or otherwise of the "useless formality" theory and leave the matter for decision in an appropriate case, inasmuch as, in the case before us, "admitted and indisputable" facts show that grant of a writ will be in vain as pointed [S.L. Kapoor v. Jagmohan, (1980) 4 SCC 379] out by Chinnappa Reddy, J."

31. *In State of U.P. v. Sudhir Kumar Singh [State of U.P. v. Sudhir Kumar Singh, (2021) 19 SCC 706 : 2020 SCC OnLine SC 847] referring to the aforesaid cases and several other decisions of this Court, the law was crystallised as under : (SCC para 42)*

"42. An analysis of the aforesaid judgments thus reveals:

42.1. Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

42.2. Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again,

prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

42.3. No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

42.4. In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

42.5. The "prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice."

21. Therefore, in the considered opinion of this Court, no prejudice has been caused by not conducting a regular enquiry, when the charges were duly admitted by the petitioner in his reply, and tried to create excuse of having issued recommendation of a forged and fraudulent application under some mental tension.

22. So far as the question of punishment being shocking disproportionate is concerned, the same does not appear to be so. It is a case of fraud and forgery committed and amount of Rs.2.00 Lakhs withdrawn from the State exchequer and remitted to account of beneficiary. The petitioner had recommended the said fraudulent application supported with forged documents being Panchayat Secretary. Therefore, the punishment of dismissal is fully commensurate with the misconduct.

23. Consequently, finding no reason to interfere in the order Annexure P-1 dated 14.02.2020, the petition **stands dismissed.**

(VIVEK JAIN)
JUDGE

nks